

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In-N-Out Burger
Opposer

v.

REPIN - SKEES, INC.
Applicant



12-04-2001

U.S. Patent & TMO/TM Mail Rpt Dt. #01

NOTICE OF OPPOSITION

Opposer, In-N-Out Burger, a California Corporation, with a business address of 4199 Campus Drive, 9th Floor, Irvine, CA 92612, hereby opposes registration of the mark RUSH-IN RUSH-OUT that is the subject of application 76/296,778, published in the Official Gazette of November 13, 2001, and requests that registration to Applicant be refused.

As grounds in support of the opposition, Opposer asserts as follows:

1. Opposer, for many years and since long prior to any date of first use upon which Applicant can rely, has adopted and continuously used the term In-N-Out for its restaurant services.
2. Opposer is the owner of the following registrations for the marks IN-N-OUT, IN-N-OUT BURGER and IN-N-OUT BURGERS for restaurant services and carry-out restaurant services, each of said registrations being valid, subsisting, unrevoked and uncanceled:

IN-N-OUT -- 1,085,163; 1,522,799; 1,525,982;

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IN-N-OUT BURGER -- 1,031,095; 1,031,096; 1,516,560; 1,528,455; 1,528,456;
1,539,541.

IN-N-OUT BURGERS -- 1,023,506.

3. Opposer is the owner of the following registrations for the marks IN-N-OUT and IN-N-OUT BURGER for food items associated with its restaurant services, namely cheeseburgers, hamburgers, French fried potatoes, hot coffee, milk, milkshakes, lemonade and soft drinks, each of which is valid, subsisting, unrevoked and uncanceled:

IN-N-OUT -- 1,101,628; 1,101,638; 1,522,799; 1,525,982;

IN-N-OUT BURGER -- 1,031,095; 1,031,096; 1,516,560; 1,528,455; 1,528,456;
1,539,451; 2,026,720.

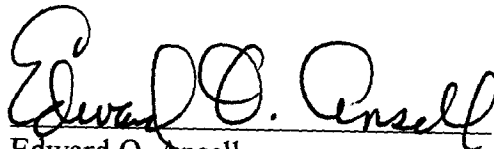
4. Applicant has filed an intent-to-use application to register the mark RUSH-IN RUSH-OUT for restaurant services. That application was filed on August 7, 2001, and assigned Serial No. 76/296,778.
5. Applicant's mark so resembles Opposer's previously used and registered marks IN-N-OUT, IN-N-OUT BURGER and IN-N-OUT BURGERS as to be likely, when used in connection with the services set forth in Applicant's application, to cause confusion, mistake, or deception within the meaning of Section 2(d) of the Trademark Act.
6. Applicant's mark so resembles Opposer's previously used, registered, and famous marks IN-N-OUT, IN-N-OUT BURGER and IN-N-OUT BURGERS as to be likely, when used in connection with the services set forth in Applicant's application, to lessen the capacity of Opposer's said marks to identify and

distinguish Opposer's services and goods, regardless of the presence or absence of competition between Opposer and Applicant, or likelihood of confusion, mistake or deception.

WHEREFORE, Opposer prays that the opposition be sustained and that registration to Applicant be refused.

Respectfully submitted,
In-N-Out Burger

By



Edward O. Ansell
Attorney for Opposer


Date: Dec. 4, 2001

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Date of Deposit: Dec. 4, 2001

I hereby certify that this correspondence is being deposited with the United States Postal Service "Express Mail Post Office to Addressee," service under 37 C.F.R. § 1.110 on the date indicated above and is addressed to: Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3573.

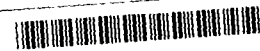


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Assistant Commissioner of Trademarks
Box TTAB/FEE
2900 Crystal Dr.
Arlington, VA 222-2-3513

Sir:

Please find enclosed a Notice of Opposition (in triplicate) with respect to Application Serial No. 76/296,778, RUSH IN RUSH OUT, published in the Official Gazette of November 13, 2001, together with a check for \$300.

Date: Dec 4, 2001

Edward O. Ansell

Attorney for Opposer, In-N-Out Burger

Enc. a/s

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cc:In-N-Out Burger